

First Amendment to  
Pre-Authorization Decision  
Document for New Castle County

Army Creek Landfill Superfund Site  
New Castle County  
Delaware

FIRST AMENDMENT

DECISION DOCUMENT

PRE-AUTHORIZATION OF A CERCLA § 111(a) CLAIM

ARMY CREEK LANDFILL SITE - NEW CASTLE COUNTY, DELAWARE

WHEREAS, the United States Environmental Protection Agency ("EPA") issued a Pre-Authorization Decision Document ("PDD") in connection with the Army Creek Landfill Site in New Castle County, Delaware ("Site"), on September 27, 1990; and

WHEREAS, under the terms of the PDD, EPA agreed to reimburse New Castle County ("the County") the lesser of two million dollars (\$2,000,000.00) or forty percent (40%) of reasonable and necessary eligible costs which the County incurred in construction and operation of a groundwater recovery and treatment system for the Site; and

WHEREAS, construction of the groundwater recovery and treatment system for the Site was completed by the County in September 1995; and

WHEREAS, under the terms of the original PDD, claims could be submitted against the Superfund by the County for a period not to exceed ten years from the date that construction of the treatment facility was completed; and

WHEREAS, the ten-year limitation period was required by Section 104(c)(6) of CERCLA, 42 U.S.C. § 9604(c)(6), and Section 300.435(f)(3) of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.435(f)(3) ("NCP"), which allow the costs of operation of a groundwater collection and treatment system to be considered remedial action (and thus eligible for Fund financing) only for the first ten years after the system becomes operational and functional; and

WHEREAS, on August 8, 2004, EPA notified the County that it had approved an increase of \$906,596.48 in the pre-authorized amount for which the County could seek reimbursement pursuant to Paragraph 14 of the PDD; and

WHEREAS, the County has constructed a new groundwater collection and treatment system as part of a Pilot Program which began in October 2005; and

WHEREAS, the Pilot Program involved the shutdown of the original groundwater treatment system, installation of a new well, and implementation of an expanded soil, sediment, and groundwater monitoring program; and

WHEREAS, the County continues to incur costs in connection with the Pilot Program and an expanded groundwater monitoring system that the County has implemented and expanded at EPA's request; and

WHEREAS, neither CERCLA nor the NCP prohibits an extension of time to submit reimbursement claims for costs associated with the remedial action other than for groundwater collection and treatment; and

WHEREAS, there remains \$906,596.48 in the Superfund obligated for the Site, allocated to the County, and available for reimbursement; and

WHEREAS, EPA has determined that it would be appropriate to extend the period of time in which the County may seek reimbursement from the Superfund from September 30, 2005 to March 31, 2009, because the County has incurred costs in excess of those anticipated at the time the September 27, 1990 PDD was issued and because the County has undertaken additional project work requested by EPA.

NOW, THEREFORE, the Pre-Authorization Decision Document relating to the Army Creek Landfill Site issued on September 27, 1990, and attached hereto as Exhibit 1, is hereby amended as follows:

1. The Section entitled Statement of Authority is amended by inserting the following at the end of the last sentence:

“On July 24, 2002, Headquarters delegated to the Regional Administrators the authority to preauthorize claims against the Hazardous Substance Superfund for necessary response costs (and any modifications thereto). On November 7, 2003, the Regional Administrator of EPA Region III further delegated this authority to the Director of the Hazardous Site Cleanup Division.”

2. The Section entitled Decision and Terms and Conditions is amended by:

A. Deleting the text of Paragraph 12(c) and replacing it with the following:

“c) annually thereafter for other costs incurred to implement Work-2, up to and including March 31, 2009, subject to availability of funds; and

d) Remaining eligible costs following EPA issuance of the Certification of Completion.”

B. Deleting the text of Paragraph 19(b) and replacing it with the following:

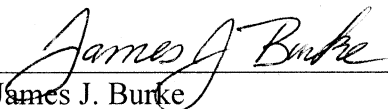
“b) Costs may be reimbursed for completion of the design and construction of

a groundwater recovery and treatment system, including costs to determine that the system is functional, pumping and treatment of groundwater at the Site as provided herein, and for any additional work implemented by the County at the request of EPA. Such costs shall not include any of the oversight costs incurred by EPA, nor costs that were incurred by EPA prior to the effective date of the Consent Decree.”

This First Amendment shall not have any effect on any term of the September 27, 1990 PDD other than those set forth above. All other terms of the September 27, 1990 PDD shall remain the same and shall have the same full force and effect. Consistent with the September 27, 1990 PDD, this First Amendment shall be effective as of the date of execution by the Director of the Hazardous Site Cleanup Division as set forth below.

THE PDD IS SO AMENDED

By:



James J. Burke  
Director, Hazardous Site Cleanup Division  
U.S. Environmental Protection Agency  
Region III

Date:

